APPENDIX.

STATEMENT OF FACTS.

I. PERSONAL INJURY CLAIMS.

(a) Claim of Jerome Kierzek (Award: $88,860).

On May 7, 1965, Jerome Kierzek was 20 years old and unmarried (842). Like all other claimants, he was a resident of Rogers City, Michigan. He began sailing for U. S. Steel upon graduation from high school in 1963 (842) and was serving as a Porter when the *Cedarville* sank (843).

The *Cedarville* capsized about 10:25 a.m. on May 7, 1965. As the ship rolled to starboard, Kierzek went into the water and swam a few feet to a nearby life boat (845). Within one-half hour of the sinking, Kierzek and the other survivors were taken aboard the German vessel *Weissenburg* and shortly thereafter transferred to the Coast Guard cutter *Mackinac* (846-847). He and the others went ashore at Mackinac City in the early afternoon and were taken to Cheboygan Hospital to be examined by doctors (847-848). Kierzek made no complaints at the hospital (859), and the results of the physical examination were completely negative except for a "contusion" or bruise on his left chest (Kierzek Cl. Ex. 6). Kierzek returned to his home in Rogers City that same afternoon.

Kierzek remained at home awaiting reassignment to another U. S. Steel vessel and returned to sailing on May 23, 1965 as soon as an opening was available (849-850). In the autumn of 1965, he was promoted to Second Cook, being advanced over another Porter with greater seniority (855, 866). In September of 1965, Kierzek married and subsequently he and his wife had a child (842).

In March of 1966, Kierzek was drafted into the United States Army (843). He passed his pre-induction and induction physical and mental examinations without difficulty (854). During his two years in the Army, he advanced to the rank of Specialist Fifth Class, a promotion of five levels over a two-year period (854). He served in Viet Nam and won three medals for his service there; he also earned a sharpshooter's medal (854). While in the Army, he served as a First Cook (843), supervising two or three men at all times (862). Kierzek made friends in the Army (854) and, at the time he testified in Cleveland, stated that he was happy with his work and that he had no difficulty in performing his duties (862). The Court below found he had performed his two year Army duty "in exemplary manner" (120).

Following his honorable discharge from the Army in March of 1968, Kierzek returned to work as a Second Cook aboard a U.S. Steel laker vessel (868). In reapplying for employment, Kierzek underwent a complete physical examination which was completely negative and completed a questionnaire in which he denied the existence of any illnesses, operations or injuries which required the care of a physician (Kierzek Def. Ex. 8, 909-911).

On May 7, 1965, Kierzek was earning approximately $492 a month (Kierzek Ex. 4); three years later, in March of 1968 as a Second Cook, he was earning $749 a month (Kierzek Def. Ex. 5A).

Kierzek has not missed one day from work, either while in the employ of U.S. Steel or in the Army, since his return to sailing following the sinking due to any condition allegedly relating to the sinking of the *Cedarville* (863-866).

Kierzek has never, at any time, seen a doctor or sought medical assistance for any condition claimed to be

connected with the sinking (853), even though medical assistance has been available at all times at no cost either through the United States Public Health Service or through the Army.

The District Court found that Kierzek has a "normal and happy" family life (120) and that he has had "modest success in his endeavors" to "carry on a normal life pattern" since the sinking (121). It was also found that Kierzek suffered "physical and mental injuries" with resulting permanent disabilities (121-122). The nature and extent of these injuries and disabilities were not specified.

The District Court awarded Jerome Kierzek $88,-860.00. Of this amount, $43,000 was awarded for loss of earning capacity; $15,000 for pain and suffering experienced during the incident of May 7, 1965; $29,300 for residual pain and suffering and loss of life's pleasures and $1,560 was awarded for cost of future medical expenses (122).

(b) Claim of Stanley Mulka (Award: $92,740).

At the time of the sinking of the *Cedarville*, Stanley Mulka was 20 years old, single and a resident of Rogers City, Michigan (913). He had studied for the Roman Catholic priesthood and had gone to a seminary high school and Aquinas College until February of 1965 (913-914). In college, his grades were generally C's and D's and he had been placed on scholastic probation (943). In early 1965, prior to the sinking, Mulka sought treatment on several occasions from a doctor in Grand Rapids, Michigan, for constant headaches which were severe enough to cause him to consider leaving school. He was also seen by the school doctor for complaints of nervousness (Mulka Def. Ex. 4; 123).

Mulka interrupted college in February of 1965. He stayed home for several weeks and then, on April 25, 1965, sailed for the first time in his life as a Deckhand aboard the *Cedarville*. Mulka sailed for 13 days, to May 7, 1965, when the *Cedarville* sank (914).

Mulka's experiences during and immediately after the sinking were similar to those of Kierzek. He made no complaints to the examining physician except for some minor bruises, aches and pains, and he was released to return home on the afternoon of May 7, 1965 (917).

Three days after the sinking, Mulka went to work for his uncle at a plumbing company in Rogers City (920). He returned to college at the first available opportunity, entering Michigan State University in the summer of 1965 as a guest student because he could not be admitted as a full-time student due to his poor scholastic record. Mulka returned to Aquinas College in the fall of 1965 and finally in the spring of 1966, entered Central Michigan University. At Central Michigan, in contrast to the C's and D's he received prior to the sinking, his grades were A's and B's with a single C (Mulka Def. Ex. 3). On vacations, he continued to work as a plumber (950).

In contrast to his prior monastic life as a seminarian, at Central Michigan, he moved into a small apartment with classmates with whom he got along well (947). He eventually joined a fraternity (948). He was active in extracurricular activities, becoming Vice-President of the Psychology Club (948). He met a girl whom he intended to marry upon graduation from college (962).

At the time of the hearings below, Mulka was well along the road toward becoming a full-time high school teacher. He had participated in the intern teaching program at Central Michigan and had been told that he would make an excellent teacher as a result of evaluations con-

ducted by the school board at Saginaw, Michigan (961). He had been offered a permanent position in the Saginaw school system with a starting salary of $6,100 for nine months of work (948, 964, 966). There were also fringe benefits, including a pension plan, in connection with this position (966). This contrasted with the $492 a month or $4,428 he could have earned during the nine month sailing season if he had remained employed as a Deckhand.

Mulka's complaints in the hearings below were of "nervousness" (941) and constant "excruciating headaches" (939), as well as vague pains in the fingers, neck and low back. Mulka had a history of nervousness and headaches prior to the sinking which had caused him to seek medical treatment (123). However, as found by the District Court (124):

> "He has sought no medical treatment since May 7, 1965."

Moreover, at the time he applied for admission to Central Michigan University in the fall of 1965, Mulka completed a questionnaire in which he specifically denied any history of nervousness or headaches (Mulka Def. Ex. No. 9, 1005-1007). Similarly, in his application for a teaching internship, Mulka described his health as "excellent" (945).

The District Court found Mulka had emotional problems before the sinking and that this "condition was aggravated" by that experience. No further findings describing the nature or extent of aggravation were made (125).

The District Court awarded Stanley Mulka $92,740. Of this amount $53,000 was awarded for loss of earning capacity, $15,000 for pain and suffering experienced during the sinking, $18,500 for residual pain and suffering and loss of life's pleasures and $6,240 for the cost of future medical treatment (125-126).

(c) Claim of Raphael Przybyla (Award: $196,288).

On May 7, 1965, Raphael Przybyla was 37 years old, married, the father of four minor children and a resident of Rogers City, Michigan. Despite his age, Przybyla had been sailing for only six months, having started sailing at the age of 36 in June of 1964. For the preceding eighteen years, except for a two-year tour of duty with the Army, he had worked for his father at his father's automobile agency in Rogers City (1236-1237).

Przybyla's experiences during the sinking were similar to the other claimants. He complained of soreness and bruises at the hospital, was examined and discharged, returning home about 5:00 p.m. on the day of the sinking (1240-1241).

Shortly after the sinking, Przybyla returned to work for his father who asked him to come back to work at the auto agency and, as an inducement, offered him an increase in salary (1263, 1267). Upon returning to work for his father, Przybyla worked his way up until, at the time of the hearings below, he was Manager of Parts and Service at the automobile agency. In addition, Przybyla's father semi-retired on January 1, 1968, leaving actual control of the business to his son (1290).

Przybyla's earnings from 1963 to 1967 were as follows (Przybyla Ex. 2A-D, 5):

Year		*Earnings*
1963		$6,450.39
1964		$6,481.31
1965	*(Sinking)*	$7,099.60
1966		$6,600.00
1967		$7,736.88

Przybyla testified he works regularly nine hours a day, six days a week at the auto agency (1243). In addition, although he is scheduled to work only one night a week, he normally works several nights a week (1243).

Przybyla is also active in a variety of community activities. He is a committee man with the Cub Scouts (1250); bowls one night a week in a league (1250); plays "blooper ball" (a form of softball) in a league two nights a week in the summer (1250); is a member of the Knights of Columbus (1251); attends church regularly; belongs to the Ushers Club at the church (1251); is a member of the Veterans of Foreign Wars and of the Rogers City Servicemen's Club (1251-1252); has been a boy scout master (1265); is on the Board of Rogers City Community Development (1265); and has acted as the manager of a little league baseball team (1265).

Przybyla and his wife lead an active social life. Przybyla testified that following bowling, he often goes to the Deer Hunt Inn in Rogers City and to the Grove in Alpena, approximately 25 to 30 miles from Rogers City, "to have a few beers" (1249, 1252). He also stops at the Deer Hunt Inn and the Grove on other occasions to entertain car customers (1249). Mrs. Przybyla testified that she and her husband often had social engagements and that the neighbors have not been aware of any difficulties in their home life (1278).

From the evidence presented at the hearings, the principal problems confronting Przybyla are difficulties with his wife due to his frequent absences from the family home. However, as found by the Commissioners at page 69 of their report (130):

> "Mr. Przybyla had emotional problems before May 7, 1965."

Further, the District Court found Przybyla's wife had always been a "dominating personality" and that there were family difficulties before the sinking (127). The District Court also found these difficulties were aggravated by a bladder or kidney infection Mrs. Przybyla contracted in 1965 which had affected her attitude towards sex (128).

Przybyla has missed no time from work for medical reasons and has sought no medical treatment of any kind since May 7, 1965 for any conditions of claimed ill-being (1254-1255, 1261). His *one* visit to a doctor after May 7, 1965, was on May 21, 1965, when he saw Dr. Jackson the U.S.P.H.S. doctor in Rogers City for examination only.

The District Court found Przybyla suffered "severe emotional damage and moderately severe physical injuries as a result of the sinking of May 7, 1965." There were no further findings (130).

The District Court awarded Raphael Przybyla $196,-288. Of this amount, $99,000 was awarded for loss of earning capacity, $15,000 for pain and suffering sustained during the sinking, $55,000 for residual pain and suffering and loss of life's pleasures, $15,600 for the cost of future medical services, and $11,688 for maintenance and cure (130-131).

(d) Claim of Ronald Piechan (Award: $82,160).

On May 7, 1965, Ronald Piechan was 37 years old and unmarried (1164). He attended Central Michigan University for three years and then began work on U.S. Steel laker vessels in 1951. He started as an Oiler, became an Assistant Conveyorman and was promoted to Conveyorman in 1957 (1165). He has sailed regularly as a Conveyorman on U.S. Steel sheeps from 1957 to the present time (1165).

Mr. Piechan's experience with the sinking was like the others, except unlike the others, Piechan refused to go to the hospital for an examination (1170).

Piechan returned to regular employment aboard a U.S. Steel vessel on May 24, 1965 after he was certified fit for duty by the U.S.P.H.S. doctors in Rogers City (1172). Since that time, Piechan has not missed a single day from work or a minute from any watch due to *any*

condition of ill-being (1183). He has not lost a single day's wages. He has maintained the same position, that of Conveyorman, that he held for twelve years prior to the sinking, a position which represents the peak of his particular employment classification (1183). During the winter, he continues to work on the conveyor machinery aboard the vessel (1184).

Piechan's earnings from sailing, as shown by his income tax returns and U.S. Steel's accounting records, for the years from 1960 to 1967 are as follows: (Piechan Ex. 2A—2F, Piechan Def. Ex. 10, 1235).

Year		*Earnings*
1960		$9,689.87
1961		$9,730.42
1962		$9,610.38
1963		$9,710.38
1964		$9,689.68
1965	*(Sinking)*	$11,034.99
1966		$9,887.00
1967		$9,546.03

Piechan testified he has never complained to any of his superiors about any disability which prevents him from standing his regular duty watch (1185), that he gets along with his fellow officers and the crew (1187), that he talks with them (1187), that he, as a gang boss, gets along with his work gang in the winter, and that the men who work under him in the winter like him (1187).

Moreover, Piechan enjoys the same past-times and social relationships as he did prior to May 7, 1965. He enjoys hunting, fishing and playing Spitzer, a card game popular in Rogers City (1182).

When he testified at the hearings below, Mr. Piechan complained of some difficulties with his knees and right hand which "come and go (1173-1175). Since the sinking, he has received sporadic medical treatment for these

conditions. He did not see a doctor in connection with his knees until *six* months after the sinking, in October of 1965 (Piechan Ex. 7). He saw Dr. Jackson of Rogers City two or three times and he also saw Dr. Reis of Rogers City a few times in 1966 (1174). The condition in his knees was diagnosed by the treating doctors as arthritis and rheumatism (Piechan Ex. 7). His difficulties with his knees and hands have not been sufficient to cause him to lose any time from work or to interrupt normal off-duty activities such as hunting, fishing and playing Spitzer (1182). Moreover, Piechan has a history of knee difficulties and underwent surgery in 1963 for a cyst on his left knee (1166).

This is not surprising in view of the nature of Piechan's work which involves manual labor performed in a damp and cold tunnel running through the hold of the ship, far below its deck, where it is necessary to crawl to perform the work (1179-1180). Medical assistance for his knees and hands has been provided to Piechan at no expense by the United States Public Health Service in Rogers City.

Since May 7, 1965, Piechan has sought no psychiatric assistance and the record contains no evidence that he might do so in the future. Indeed, both psychiatric experts agreed Mr. Piechan had no current emotional problems. As found by the District Court (134):

> "Interestingly, both psychiatrists agreed that minor psychological problems were created immediately after the sinking which were caused by the sinking. Also that a good recovery was revealed at present."

The District Court concluded (134):

> "We find that claimant Piechan suffered temporary disability from his experience of May 7, 1965, with only slight disability of any permanent nature."

Ronald G. Piechan was awarded $82,160 as compensation for these "slight" disabilities: $26,000 for loss of earning capacity; $15,000 for pain and suffering incurred during the incident of May 7, 1965; $31,800 for residual pain and suffering and loss of life's pleasures; and $9,360 for future psychiatric medical expenses (135).

(e) Claim of Billy R. Holley (Award: $251,976).

Billy R. Holley was 37 years old on May 7, 1965, married and the father of three children. A former Coast Guard enlisted man who was stationed near the Straits of Mackinac, the scene of the sinking (1038), he started sailing for U. S. Steel in 1955 (1010). In those ten years, he served as a Stokerman, the second lowest engine room position (1010-1011). Following the sinking, Holley resumed sailing for U. S. Steel as a Stokerman and continues to work regularly in this capacity.

Holley's experience with the sinking was similar to the others and like the others, Holley was soon taken aboard the *Weissenburg*, given hot tea and a change of clothes, and transferred to the *Mackinac* (1015). He arrived ashore at Mackinac City in the afternoon of May 7 (1016), where he was examined and released to return home (1016).

After his return home in the afternoon of May 7, Holley went to the hospital and stayed overnight for observation and treatment of back pain. He was released the following day and remained home several more days awaiting reassignment. On June 3, 1965, after being certified as fit for duty by the U.S.P.H.S. doctor in Rogers City, Holley resumed sailing (137). Holley claimed he was somewhat nervous and had some difficulty adjusting to his return to sea during that summer which caused him to lose some time from work. In the period from June 3

through August, 1965, Holley lost a total of fourteen working days (137).

After August of 1965, he sailed continuously through the remainder of the 1965 season. In 1966, Holley had a recurrence of a pre-existing hemorrhoid condition unrelated to the sinking which caused him to miss a few days' work. Other than this one absence, Holley sailed regularly during the 1966 shipping season (1036). In 1967, Holley missed no work due to illness (1036). Holley's earnings for the relevant years have been as follows:

Years		*Earnings*
1960		$8,018.56
1961		$8,221.15
1962		$7,855.00
1963		$8,289.80
1964		$7,516.86
1965	*(Sinking)*	$8,874.45
1966		$9,195.25
1967		$8,138.55

Holley testified he gets along with the men on the ship and does not quarrel with them (1037). He has always had a roommate on the ship with whom he has gotten along (1037). This is in contrast to Holley's prior work history. In 1962, the Chief Engineer asked that Holley be taken off his ship because he was a trouble maker (1037, 1038, 1057, Holley Def. Ex. 3). Holley testified that he now gets along well with his superiors and they have not complained about his disposition or performance (1057-1058).

Holley was elected a member of the union negotiating committee by his shipmates in the years 1964, 1965, 1966 and 1967 (1050) and he has served as ship's delegate since 1965 (1050) and on the grievance committee (1050).

Holley testified that he has "lots of friends in town" as well as "good neighbors" (1054). He attends church

regularly, is a member of the Masonic Lodge and the Serviceman's Club in Rogers City (1041). Holley testified he has never been separated from his wife and has never considered a divorce (1038). Holley takes his wife out to the Deer Hunt Inn, the Grove in Alpena, and to the Gold Front, Two-Mile Inn and other places in Cheboygan, Michigan (1040-1041).

Holley has seen doctors on several occasions since May 7, 1965. However, this is consistent with his medical history prior to May 7, 1965, when he sought treatment for the same ailments.

Holley's principal complaints since the sinking have been difficulties with his back, nerves, a rash in the groin area (which he related to nerves) and stomach difficulties. Holley had all these problems before the sinking. His first back trouble in 1959 disabled him for ten to fifteen days (1011), and x-rays taken after the sinking showed the condition of his back to be the same as it had been following the accident in 1959 (Holley Def. Ex. 12). Holley complained of a rash following the Cedarville sinking. He also had a rash in the groin area in 1962 as a result of his father's stroke (1012). Holley also had stomach pains in 1962 (1012).

A complete review of Holley's medical history reveals he saw a doctor three times in 1958 for a variety of complaints including skin difficulties (1034), that he saw a doctor seven times in 1959 for complaints including his back pains (1034), and that he saw a doctor once in 1960 and twice in 1961. Holley saw a doctor on eight occasions in 1962, including visits for stomach pains and his rash (1035). In 1963, he saw a doctor three times, including a visit for hemorrhoids, which were apparently related to the stomach difficulties (1035). Holley made two visits in 1964, one of which concerned the hemorrhoid condition (1036).

Holley has never sought or requested psychiatric assistance. Moreover, all treatment received by Holley since May 7, 1965 was provided at no expense by the U.S.P.H.S. doctors in Rogers City (Holley Ex. 8). Holley expressly disavowed any additional maintenance and cure was due him (1046).

The District Court found that Holley "sustained permanent physical and emotional injuries of severe degree" as a result of the sinking (140). There was no other description of the nature of these injuries and no attempt to specify how these injuries have affected Holley except to state that he is nervous, irritable and has difficulty sleeping (137).

The District Court awarded Billy R. Holley more than a quarter of a million dollars. Of that amount ($251,976), $132,000 was awarded for loss of earning capacity, $20,000 for pain and suffering experienced during the sinking, $73,000 for other residual pain and suffering and loss of life's pleasures, $11,376 for maintenance and cure and $15,600 for the cost of future medical expenses (140-141).

(f) Claim of Michael Idalski (Award: $89,420).

On May 7, 1965, Michael Idalski was 50 years old. He began his career on U. S. Steel ships in 1933 as a coal passer and has worked for no other company. When the *Cedarville* sank, he was a Third Assistant Engineer (1353-1354).

Idalski's experiences during the sinking of the *Cedarville* were like those of the other claimants. He was taken to the hospital, examined, released and returned to his home in Rogers City by late afternoon (1358-1359).

Idalski initially complained only of abrasions and contusions to his left elbow and leg immediately after the sinking (Idalski Ex. 8). He saw the U. S. Public Health

Service doctor on three occasions for treatment of his knee and elbow, on May 10, May 14 and June 1, 1965. On this last occasion, Idalski was pronounced fit for duty and he resumed sailing aboard a U. S. Steel ship on June 3, 1965 (1361, 1391; Idalski Def. Ex. A).

Except for an absence from June 11, 1965 to August 21, 1965 due to a hernia operation, unrelated to the sinking, Idalski did not miss one day of work due to sickness from June 3, 1965 to the date of his testimony in these proceedings (1397, 1399-1400).

Idalski was promoted to Second Assistant Engineer in August of 1966 and has served as such to the present time. He had been passed over for promotion several times prior to the sinking (1391-1392), and he has now reached his career peak because he is not licensed to serve as First Assistant Engineer.

Idalski testified he has no trouble with the men serving on the ship (1391) and that he gets along with his fellow officers (1392). He also stated that he feels he is fit and competent to serve as an officer and that he has experienced no difficulty in performing his duties (1373). Although past 50 years old, Idalski often works with heavy weights, lifting several hundred pounds on occasion.

His earnings record has been as follows (Idalski Ex. Nos. 2-A—2-G and 5):

Year		*Earnings*
1961		$12,140.90
1962		$13,361.22
1963		$14,694.86
1964		$14,409.93
1965	*(Sinking)*	$12,784.39
1966		$13,980.31
1967		$16,503.07

Idalski testified that he enjoys a normal relationship with his wife (1389) and exchanges social visits with his

friends (1389). He also testified that he has a warm relationship with his children and grandchildren (1401).

Since June 1, 1965, Idalski has not sought any medical assistance of any kind for any condition allegedly resulting from the sinking (1370-1374). Idalski saw doctors for other ailments, such as the hernia operation mentioned above. Idalski also saw a doctor on two occasions in 1967: once to obtain a flu shot and once to seek treatment for sharp chest pains which he admitted had no relation to the sinking (1396). Idalski also admitted that, during these consultations with doctors, despite the claimed pain in his legs, elbow and shoulder, his alleged nervousness and his claimed lack of sleep, all of which, according to him, were getting progressively worse, he failed to mention any of these conditions (1396).

The District Court made only cursory findings in connection with the Idalski claim. After summarizing the testimony presented by both sides, the District Court concluded (144):

> "We determine that the claimant Idalski was injured on May 7, 1965, and was damaged thereby."

The injuries are not further specified or described.

The District Court awarded Idalski $89,420. This included $12,000 for loss of earning capacity, $10,000 for pain and suffering experienced during the sinking, $51,260 for other residual pain and suffering and loss of life's pleasures, $4,680 for future medical expenses and $11,480 for maintenance and cure (145-146).

(g) Claim of Walter Tulgetske (Award: $195,888).

On May 7, 1965, Walter Tulgetske was 44 years old. Although he had completed only the eighth grade, he had advanced by that date to the position of First Assistant Engineer of the *Cedarville*. Tulgetske's wife died in 1967; the couple had no children.

As the ship rolled to starboard, Tulgetske went into the water and was picked up by the *Cedarville's* lifeboat. As was true of the others, he was examined ashore by a doctor (his only complaints were that he was "numb and cold all over") (1546-1547) and released. He returned immediately to his home in Rogers City (147).

Tulgetske did not return to sailing immediately but helped search for the missing men (147). He was paid for his time off and then, as found by the Court below (147):

> "He returned to work on May 30, 1965 and has been sailing ever since."

In 1966, Tulgetske was promoted to Chief Engineer (1567). As Chief Engineer, he has performed all of his duties from the time of his promotion up to the present date (1553). He has handled many emergency situations, once going without sleep for over 36 hours to repair bearing trouble on his vessel (1554). Tulgetske testified he gets along with his fellow officers and the men who work under him and takes care of all personality conflicts in the Engineering Department (1555). Tulgetske stated repeatedly during the course of the hearings below that he believes he is qualified in all respects to serve as a Chief Engineer (1544, 1549, 1550).

Tulgetske's earnings over the past several years have been as follows (Tulgetske Def. Ex. 7, 1624):

Year		*Earnings*
1960		$15,208.32
1961		$17,069.62
1962		$19,626.16
1963		$19,091.77
1964		$19,740.00
1965	*(Sinking)*	$18,768.76
1966		$23,752.45
1967		$20,328.32

Tulgetske's home life has undergone significant change since the sinking; however, these changes are not connected with the sinking. As noted above, Tulgetske's wife died in 1967 (1565) and he now lives alone.

Tulgetske has not seen a doctor for treatment of any condition of ill-being since the sinking except a chiropractor he has seen on a few occasions (1533, 1537). No doctor has prescribed any treatment or given him any medication (1544). During his testimony, Tulgetske stated expressly he had never complained to his employer about any condition of ill-being which he thought was a result of the sinking (1549,1553). He also acknowledged that free medical care was available to him through the local U. S. Public Health Service facilities in Rogers City (1545).

Tulgetske testified he saw Dr. Foley in Rogers City in the winter of 1967 to obtain a physical examination for life insurance. Dr. Foley asked several questions about Tulgetske's physical condition and past history, and Tulgetske failed to mention any of the numerous complaints he listed at the hearings below (1543). Asked why, Tulgetske stated (1542):

> "I wasn't going for treatment, I was seeking insurance."

The District Court made virtually no findings in connection with the Tulgetske claim. The District Court's discussion of the Tulgetske claim consists of a recitation of the testimony on both sides and the following (151):

> "We find that Walter Tulgetske sustained injuries on May 7, 1965 and that such injuries were the direct and proximate result of the sinking of the *Cedarville* in the Straits of Mackinac."

There was no attempt to describe the "injuries" Tulgetske sustained or the basis in the evidence for concluding he sustained any injuries.

The District Court awarded Tulgetske $195,888. Of this amount, $46,000 was awarded for loss of earning capacity; $10,000 was awarded for pain and suffering sustained during the sinking; $120,400 for residual pain and suffering and loss of life's pleasures; $11,688 for maintenance and cure and $7,800 for cost of future psychiatric expense (152-153).

II. DEATH CLAIMS.

We are concerned here with the claims of the dependents of three deceased seamen who were serving on the *Cedarville* on May 7, 1965. Their names, positions and the amounts awarded by the District Court are as follows:

Stanley Haske	Wheelsman	$308,702
Arthur Fuhrman	Deckwatch	338,095
Eugene Jones	Stokerman	149,414

Circumstances of Death.

The record is devoid of any evidence as to the specific circumstances of the deaths of these three men. In particular, there was no evidence decedents underwent any conscious pain and suffering prior to death.

Family Relationships.

Each of the decedents left a widow and minor children. There was general testimony by each of the widows to the effect that her particular husband was a loving husband and attentive to the minor children. Jones had adult children, none of whom resided with their parents.

Remarriages.

An offer of proof was made by the shipowners that the widows of Arthur Fuhrman and Stanley Haske had remarried within two years after the death of their husbands and that, at the time of the hearings in these proceedings, these widows were living with their new husbands (508-509, 556-567).

Earnings Histories.

The gross earnings of the decedents in the years prior to 1965 were as follows:

	Fuhrman	Jones	Haske
1960	$5,902	$7,725	$8,411
1961	$4,632	$7,999	$8,156
1962	$5,014	$7,412	$8,050
1963	$7,044	$8,650	$8,213
1964	$5,889	$7,428	$7,856
5 Year Average	$5,696	$7,843	$8,137

The District Court found that these men would have realized the following gross earnings for the year from May 7, 1965 to May 7, 1966:

Fuhrman	Jones	Haske
$8,200	$8,600	$8,200

The relevant union contracts relating to Fuhrman, Haske and Jones (Kierzek Defense Exhibits 10 and 11) established the following hourly wage rates for the periods indicated for the job categories occupied by these men:

Job Classification	April 30, 1963 February 1, 1966	February 1, 1966 January 1, 1968	January 1, 1968 January 31, 1969
Wheelsman (Haske)	2.21	2.34	2.405
O.S. Deck Watch (Fuhrman)	1.86	1.99	2.05
Stokerman (Jones)	2.17	2.30	2.365

In the six year period from April 30, 1963 to January 31, 1969, there were two wage increases, one of 13 cents per hour or approximately 6% in 1966, and a second of 6 cents per hour or approximately 2½% in 1968. In all, the wage rates increased a total of 8% in the period from 1963 to 1969 or at a rate of approximately 1½% per annum and not the 4-5% per annum increase assumed by the District Court for these men.

As can be seen from an examination of the actual earning figures of these men wage rate increases did not translate themselves into proportionate actual earning increases. All of the unlicensed decedents earned less in the year immediately preceding their deaths, 1964, than they had in 1960. The reason, of course, is the varying length of the Great Lakes sailing season and the amount of overtime available.

The District Court further increased the assumed earnings of each decedent for the period after May 7, 1969, by adding a factor ranging from 2 to 4% of earnings for "personal productivity improvement and general economic development" without any basis in the evidence.

Fringe Benefits.

After computing estimated future earnings as outlined above, the District Court added additional increments to earnings to compensate the surviving families of the decedents for lost fringe benefits. The decedents, the percentages by which their earnings were increased for lost fringe benefits and the amount of the increments thus computed were as follows:

	As Percentage of Before Tax Income	*Value*
Eugene Jones	40%	$26,827
Stanley Haske	15%	27,717
Arthur Fuhrman	15%	32,660

The District Court did not specify the fringe benefits considered in making these awards and, in fact, stated that the fringe benefits were "impossible to evaluate authentically" (99).

Income Taxes.

The income tax returns of the three decedents were introduced in evidence as were the accounting records of U. S. Steel relating to these decedents. These documents show the amounts withheld from the wages of the decedents for income and other taxes in the years prior to their deaths. In the case of Jones, the applicable percentage was 12% of Jones' pay (Jones Def. Ex. 10) and in the cases of Haske and Fuhrman, 10% (Haske Def. Ex. 10; Fuhrman Def. Ex. 10). In addition, on October 1, 1967, the State of Michigan enacted a personal income tax and cities in that state have been authorized to levy such taxes.

Life Insurance Proceeds and Social Security Benefits.

The surviving families of the decedents were paid the proceeds of life insurance policies provided by U. S. Steel for its employees and were entitled over the years to receive Social Security benefits as follows (Fuhrman Def. Ex. 10; Jones Def. Ex. 10; Haske Def. Ex. 10):

	Social Security Benefits (Value at Death)	*Employer Paid Life Insurance*
Fuhrman	$49,936	$3,000
Haske	$36,720	$3,000
Jones	$23,551	$3,000

Promotion Prospects.

The three decedents, Fuhrman, Jones and Haske on May 7, 1965, held positions that they had held for years and the same as those which they could have been expected to hold over the next several years.

As of May 7, 1965, Jones had worked as a Stokerman, the second lowest engine room position, for over 20 years without promotion. Stanley Haske stood at the absolute bottom of the seniority list for Wheelsman and had no license which would entitle him to sail as an officer, his next logical step up the promotion ladder. Accordingly, he had no prospect to serve in any position other than a Wheelsman. Arthur Fuhrman, a Deckwatch, similarly had taken no action to obtain his First Class Pilot's license and had "limited" prospects of advancement (97-98).

Future Uncertainties.

Evidence was introduced of the uncertain nature of life itself. Actuaries have developed tables which show the probabilities of death at various ages and these tables were introduced into evidence (Haske Def. Ex. 10, Fuhrman Def. Ex. 10, Jones Def. Ex. 10). According to these tables, on May 7, 1965, the decedents here had the following percentage chances of dying prior to age 65:

Decedent	*Age on May 7, 1965*	*Percentage Chance of Death Prior to age 65*
Stanley Haske	36	29.5
Eugene Jones	57	18.3
Arthur Fuhrman	29	30.4

Manpower Report No. 8, a 1963 publication of the U. S. Department of Commerce, was also placed in evidence (Haske Def. Ex. 9; Fuhrman Def. Ex. 9; Jones

Def. Ex. 9). This showed there were substantial probabilities of persons such as the decedents leaving the work force prior to age 65 for disability, early retirement or any other reason.